

**THE LABOR COMMISSION
WORKERS' COMPENSATION ADVISORY COUNCIL**

**Wednesday, October 7, 2009 - 11:45 A.M.
Room 319, Heber Wells Building
160 East 300 South
Salt Lake City, Utah**

The following Advisory Council members were in attendance:

Ralph Astorga, President USWA Local 392
Dawn Atkin, Esq.
Thomas Bingham, President, Utah Manufacturers Association
David Bird, Esq.
Brandt Goble, Painters and Tapers Local 77
Edward Holmes, M.D., RMCOEH
James V. Olsen, President, Utah Food Industry Association
Brian Kelm, Esq.
Susan Kelly, Liberty Mutual
Jeff Rowley, Risk Manager, Salt Lake County
Brad Tibbitts, Utah State Insurance Department
Dennis Lloyd for Ray Pickup, Workers Compensation Fund

The following Advisory Council members were excused:

Reo Castleton, SL County Fire Department
Richard J. Thorn, President/CEO, Associated General Contractors - Utah Chapter

Legislative Liaison Absent:

Senator Karen Mayne
Rep. Mike Morley

Others Present:

Sherrie Hayashi - Commissioner
Alan Hennebold - Deputy Labor Commissioner
Larry Bunkall, Industrial Accidents Division Director, Labor Commission
Ron Dressler – Policy Manager, Labor Commission
Robyn Barkdull – Public Information Officer, Labor Commission
David Lamb – Administration Director, Labor Commission\
Jan Lommele – Deloitte Consulting, LLC
Anita Sathe – Deloitte Consulting, LLC
Rod Morris - Deloitte Consulting, LLC
Maggie Karpuk – NCCI
Scott Weston – Workers Compensation Fund

WELCOME

Welcome – Commissioner Hayashi brought the meeting to order at 11:50 a.m.

1. Miscellaneous Business - Commissioner Hayashi

Tom Bingham moved to approve the minutes of the August 12, 2009 meeting. **Dawn Atkin** seconded the motion which passed unanimously.

2. Review WC Insurance Premium Surcharge Funds

David Lamb distributed a handout summarizing the different WC insurance premium funds administered by the Labor Commission. The Employers' Reinsurance Fund (ERF) has a current balance of \$180 million; the Uninsured Employers' Fund (UEF) has approximately \$19 million; Workplace Safety Account (WPSA) now has \$500,000. Discussion was held regarding the current balances and expenditures of each fund. **Mr. Lamb** included full reports in addition to the summary if anyone was interested in more information. He added that he had reviewed the figures with the actuaries to make sure that all information used was current and exact.

3. 2008-2009 Actuarial Reports for Employers Reinsurance Fund (ERF) and Uninsured Employers Fund (UEF) by Deloitte Consulting LLP

Rod Morris, Specialist Leader with Deloitte Consulting LLP, Los Angeles office, introduced himself to the council members, along with **Jan Lommele**, Chief Property and Casualty Officer from the Hartford office, and **Anita Sathe**, Casualty and Life Actuary from the Seattle office. They were attending the meeting to present the 2009 Actuarial Reports for the ERF and UEF.

Mr. Morris distributed a summary which he reviewed with a computer presentation. He said the scope of Deloitte's services include estimating the unpaid claim liability for the funds; making financial projections by estimating future financial results through FY2025 based on estimated expenses and revenue; and providing recommendations to the Labor Commission regarding the premium surcharges for 2010.

Mr. Morris reported that Deloitte's estimated unpaid claim liability for the ERF is approximately \$43 million higher than the prior actuary. This is mainly due to the \$27.5 million social security offset required by the Merrill decision, an increase in the estimate of future medical reimbursements to insurers of \$10 million, and about \$5.7 million change in interest rate assumptions. He said there were two options to appropriately fund the ERF: a constant assessment rate of 3.25% for the next two years, or a declining assessment rate over the next three calendar years.

The UEF, according to Deloitte's findings, continues to grow under the current assessment rate of .25% and will have a fund balance estimated to be \$36.9 million by 2025. Deloitte's analysis indicates that a lower assessment rate may be warranted for the UEF, especially since a large expense item will be moving to the Industrial Accidents Restricted Account (IARA) in FY11. Deloitte recommended lowering the premium assessment rate to 0.15%.

Mr. Morris noted that the social security offset has not been considered in any of the assessment proposals as there has not yet been a decision rendered by the court. This could potentially involve about \$13 million for retroactive payments once that decision has been reached.

In summary, Deloitte was proposing an assessment rate total of 4.40%: ERF – 3.50%; UEF – 0.15%; added to the statutorily mandated assessment rates for the Workplace Safety Restrict Account (WSRF) – 0.25%; and IARA – 0.50%.

4. Recommendations for WC Insurance Premium Surcharge Rates for ERF and UEF as of January 1, 2010.

Discussion was held concerning the assessment rate proposals.

MOTION: Jim Olsen moved to accept the recommendations of Deloitte Consulting regarding the assessment rates for the Labor Commission funds. A total of 4.40%: ERF – 3.50%; UEF – 0.15%; added to the statutorily mandated assessment rates for the Workplace Safety Restrict Account (WSRF) – 0.25%; and IARA – 0.50%. **Dawn Atkin** seconded the motion.

David Bird asked that the potential \$13 million needed to pay the social security offset be included in Deloitte's full actuarial report for informational purposes.

Jeff Rowley asked about the projected high balance of the UEF and suggested the rate should be lower. His reasoning was that the issue is revisited each year and if catastrophe should occur, the rate could be adjusted higher if necessary, but should be lowered at this time to prevent large surplus funds. **David Bird** suggested the rate be dropped from 0.25% to 0.15% to keep the fund balance closer to the minimum requirement.

SUBSTITUTE MOTION: David Bird moved to adopt the recommendations of Deloitte Consulting regarding the assessment rates for the Labor Commission funds with the exception that the UEF be lowered to 0.05% for a total of 4.30% in assessments: ERF – 3.50%; UEF – 0.05%; added to the statutorily mandated assessment rates for the Workplace Safety Restrict Account (WSRF) – 0.25%; and IARA – 0.50%. He included in the motion that Deloitte should show this projected scenario in their full report. **Brian Kelm** seconded the motion which passed unanimously.

Tom Bingham asked that the WCF and other WC insurance carriers include somewhere in their policy billing information sent to employers that the assessment rates for 2010 have decreased to 4.30%. He wanted employers to be informed that they do pay the assessment rate with their policies and what that rate currently is. The Labor Commission will also publicize that information.

Alan Hennebold said the premium assessment rates will be on the agenda for the Commission Open Meeting on October 14, 2009.

5. Update on Rule-making

A. R612-8 Guidelines for the Utah Injured Worker Reemployment Act

Ron Dressler explained this is a new rule, which incorporates the old R612-8 but includes language to make the rule consistent with the current statute.

Jeff Rowley noted that the language in Section 8-4 C should say, "to impose up to a \$500 civil penalty".

Dawn Atkin wanted to include language that made it mandatory for a referral to the State Office of Rehabilitation even if the claim was in dispute. **Alan Hennebold** said that language could be included through a change in Form 215.

MOTION: Jeff Rowley moved to recommend adoption of R612-8 with the changes discussed as noted above, including any grammatical changes needed. **Tom Bingham** seconded the motion which passed unanimously.

Alan Hennebold reported that R612-8 will be included on the agenda for the Commission Open Meeting on October 14, 2009.

B. R612-2-5 Regulation of Medical Practitioner Fees

Ron Dressler explained this rule incorporates the fee guidelines as approved by the WCA Council in a previous meeting and now includes the new dates adopted in the last Open Meeting. It is currently in the rulemaking process.

MOTION: David Bird moved to recommend adoption of R612-2-5. **Jeff Rowley** seconded the motion which passed unanimously.

6. Other Business

Larry Bunkall distributed Draft Forms 215 and 239 and asked council members to review them and let him know of any suggestions or changes. He said he is working with **Alan Hennebold** and will have these forms finalized within the next week. He also said the Commission will still accept Form 206 during the transition period once the new forms are introduced.

Jeff Rowley asked if these forms can be filled out electronically once they are available. **Mr. Bunkall** said they can be filled out electronically and then downloaded to be sent to the Commission, but can't be sent electronically at this time. However, he stated the Commission is moving toward that end.

Commissioner Hayashi said the next meeting of the WCA Council will be held during the legislative session on January 27, 2010 at 12:15 p.m. at the Utah Capitol Complex Cafeteria. If there is no specific business which will need to be considered prior to the end of the legislative session, the meeting will be cancelled.

Commissioner Hayashi adjourned the meeting at 1:20 p.m.